

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
)	
I Square Media, LLC)	
)	
Application for Assignment of Licenses for:)	File No. BALCDT-20160108AAQ
KMYA-DT, Camden, Arkansas)	Facility No. 86534
KMYA-LP, Sheridan, Arkansas)	Facility No. 24263
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 2017

Released: June 21, 2017

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division has before it a Petition to Deny, Dismiss, or Hold in Abeyance (Petition), filed by Marshall Media, LLC (Marshall Media), against the above referenced Application for Assignment of Licenses, filed by I Square Media, LLC (I-Square), seeking Commission consent to assign the licenses of KMYA-DT, Camden, Arkansas, and KMYA-LP, Sheridan, Arkansas, to LR Telecasting, LLC (LRT).¹ For the reasons set forth below, the Video Division dismisses Marshall Media's Petition, and denies the substantive arguments contained therein.

II. BACKGROUND

2. On June 3, 2014, KMYA, LLC (KMYA), the former licensee, filed an Application for Assignment of Licenses (2014 Application) to assign the stations to I-Square. The Commission granted the application, and the sale was consummated on September 18, 2014.² In 2015, I-Square began negotiations with LRT, and in January 2016, "entered into a binding Letter of Intent" for the sale of the

¹ Petition to Deny, Dismiss, or Hold in Abeyance (Petition) (Mar. 8, 2016). Marshall Media filed two separate supplements to the Petition on March 21, 2016, and March 28, 2016. *See* Supplement to Petition to Deny, Dismiss, or Hold in Abeyance (Supplement to Petition) (Mar. 21, 2016); *See also* Further Supplement to Petition to Deny, Dismiss, or Hold in Abeyance (Further Supplement to Petition) (Mar. 28, 2016). I-Square submitted an Opposition to the Petition (Opposition) on April 4, 2016, to which Marshall Media submitted a Reply to the Opposition (Reply) on April 15, 2016. Opposition to Petition to Deny (Opposition) (April 4, 2016); Reply to Opposition to Petition to Deny (Opposition) (Apr. 15, 2016). On November 3, 2016, LRT submitted comments against Marshall Media's Petition (LRT Comments), to which Marshall Media filed a response (Response to LRT Comments) on November 30, 2016. Comments of LR Telecasting, LLC (LRT Comments) (November 3, 2016); Response to Comments (Response to LRT Comment) (Nov. 30, 2016). Finally, LRT filed a reply to Marshall Media's response (LRT Reply to Marshall Media Response) on December 7, 2016. Reply of LR Telecasting, LLC (LRT Reply to Marshall Media Response) (Dec. 7, 2016).

² File No. BALCDT-20140609ACS.

Stations.³ Subsequently, I-Square and LRT jointly filed the above-captioned Application for Assignment of Licenses (2016 Application), which the Commission accepted for filing on January 11, 2016.⁴

3. On March 8, 2016, Marshall Media, a 10 percent interest holder of SSN Funding, LP (SSN),⁵ filed a Petition to Deny, Dismiss, or Hold in Abeyance (Petition), requesting the Division to “deny or dismiss” the 2016 Application because “[t]he proposed assignment of the Stations, if consummated, [would] result in the *ultra vires* assignment of the Stations for which [I-Square] has no authority.”⁶ Marshall Media claimed that “[d]uring the pendency of the 2014 Application, [I-Square] entered into a separate agreement with [Rock City Media, LLC (Rock City)], *i.e.*, the [Rock City APA]” on May 9, 2014.⁷ Marshall Media argues that the Rock City APA was consummated on May 9, 2014, as “evidenced by the flow of [New Market Tax Credit (NMTC)] funds from Arkansas Capital Corporation and the Heartland Renaissance Fund.”⁸ Marshall Media also argues that the Arkansas Capital Corporation and Heartland Renaissance Fund would not have released the NMTC funds to I-Square “without [I-Square’s] certification that it sold the Stations to Rock City Media”⁹ Therefore, according to Marshall Media, the 2016 Application “should be denied or dismissed because [I-Square] does not have the requisite authority to seek [Commission consent] for the assignment of the Stations’ licenses to LR Telecasting.”¹⁰ Additionally, Marshall Media states that it is “pursuing local action to resolve the disputed ownership of the stations[,]” and “[i]n the event that the Commission does not deny or dismiss the [2016 Application][,]” argues that “the public interest mandates that the Commission hold the [2016 Application] in abeyance while these serious issues are resolved” by the state court.¹¹

4. On March 21, 2016, Marshall Media filed a supplement to its Petition (Supplement to Petition) submitting additional documents¹² purporting to provide evidence that the Rock City APA was consummated. In particular, Marshall Media provides the “Written Consent of the Members of I Square Media, LLC,” which Marshall Media claims is support for its “assertion that [I-Square] received funds to assign the Stations’ assets and FCC Licenses to Rock City Media” Marshall Media also provides an Opinion Letter from Williams & Anderson PLC, a firm serving as “special Arkansas counsel” to both I-Square and Rock City.¹³ Marshall Media claims that the Opinion Letter “[provides] additional confirmation that [I-Square] received compensation for selling the Stations’ assets and FCC authorizations to [Rock City]”¹⁴ Marshall Media filed an additional supplement to its Petition

³ Opposition, Affidavit of Ladly Abraham (Mar. 21, 2016).

⁴ File No. BALCDT-20160108AAQ.

⁵ SSN Funding, LP is a 10 percent interest holder in I-Square and an 89 percent interest holder in Rock City. Reply, Appendix 1.

⁶ Petition at 1.

⁷ *Id.* at 3. SSN had helped form Rock City to effectuate the purchase.

⁸ *Id.* at 1.

⁹ *Id.* at 6.

¹⁰ *Id.* at 4-5. Marshall Media also claims that I-Square should have reported the Rock City sale to the Commission and that now “[I-Square] intends to sell the Stations to [LRT] and split the proceeds from the Incentive Auction. *Id.*

¹¹ *Id.* at 6-7.

¹² Marshall Media provided 3 documents in total, one of which was a dated copy of the Rock City APA. *See* Supplement to Petition, Appendix A.

¹³ *Id.* at 5; *See Id.*, Appendix C.

¹⁴ *Id.*

(Further Supplement to Petition) on March 28, 2017, providing a “Complaint filed in the Circuit Court of Pulaski County, Arkansas, by [Rock City], [Marshall Media], Skylar Media, LLC, Hogan Family Limited Partnership[,] and Linda Harding regarding the matters referenced in the Petition and [Supplement to Petition].”¹⁵

5. On April 4, 2016, I-Square filed an Opposition to Marshall Media’s Petition (Opposition). As an initial matter, I-Square contests Marshall Media’s Petition on procedural grounds.¹⁶ I-Square claims that the documents Marshall Media provided in its Petition and subsequent supplements “certainly [could not] stand as direct evidence that the closing that [Marshall Media] claim[ed] occurred between [I-Square] and Rock City actually did occur on May 9, 2014, or any other date.”¹⁷ To support this claim, I-Square provided the affidavit of Dr. Ladly Abraham. Dr. Abraham states that “[t]he Rock City APA presented somewhat of a peculiar situation because when it was executed, [I-Square] had not yet acquired the approval from the FCC to become the licensee of the Stations, and thus did not yet own them[,]” and that it was his “understanding that if the transaction between [I-Square] and Rock City were to proceed, it would only become effective and binding after [I-Square] had obtained FCC approval for its acquisition of the Station licenses.”¹⁸ Furthermore, “[a]s far as [Dr. Abraham was] personally aware, after May 9, 2014, nothing further happened with respect to the Rock City APA[,]”¹⁹ and “many weeks and months went by after May 9, 2014 without Rock City taking any actual steps to perform its contractual promises that were required to close on the sale of the [Rock City APA].”²⁰ According to Dr. Abraham, “[t]he members of Rebel Media (and therefore I Square itself) came to believe in good faith that Rock City had either abandoned any interest in proceeding with the purchase of the KMYA/I Square assets, or lacked the financial means and ability to fulfill its obligations under the Rock City APA.”²¹ I-Square also argued that Marshall Media’s Petition should be dismissed because it failed “to contain specific allegations of fact sufficient to show that granting the [2016 Application] would be *prima facie* inconsistent with the public interest,”²² and “that the few shreds of ‘evidence’ presented by [Marshall Media] do not raise a substantial and material question of fact justifying further inquiry.”²³

6. On April 15, 2016, Marshall Media filed a Reply to I-Square’s Opposition (Reply), claiming that “Dr. Abraham’s argument that [I-Square] had acted in good faith by assuming that [Rock City] had abandoned its interest in the Rock City APA must summarily be rejected by the Commission.”²⁴ According to Marshall Media, “[I-Square] and [Rock City] were under substantial control by the same three individuals[:] (i) Sashwat Goyal, (ii) Mangaraju Chakka[,] and (iii) Ladly Abraham[,] and [that] these three individuals merely needed to discuss amongst themselves whether they would proceed to submit the applications in the name of [Rock City], as required under the Rock City

¹⁵ Further Supplement to Petition at 1; *See Id.*, Exhibit A.

¹⁶ Opposition at 1 (“As an initial matter, although [Marshall Media’s] pleading purports to be a petition to deny, filed pursuant to Section 73.3584 of the Commission’s rules, that simply is not so”).

¹⁷ *Id.* at 4.

¹⁸ Opposition, Affidavit of Dr. Abraham, pg. 2.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5.

²¹ *Id.*; Consequently, I-Square did not file an Application to Assign the stations’ licenses to Rock City. *See* Petition, at 5-8.

²² *Id.* at 8-9.

²³ *Id.* at 9.

²⁴ *Id.* at 8.

APA.”²⁵ Second, Marshall Media claims that I-Square’s Opposition failed to provide “any reasonable justification for the Commission to ignore the plain evidence that the [NMTC] funding was provided to [I-Square] for the sale [of] the Stations to [Rock City].”²⁶ Marshall Media argues that “even if one ignores the Funds Memorandum . . . ,” which details the NMTC flow of funds to I-Square, “and even if one accepts the rather odd assertion by [I-Square] that the ‘Written Consent of the Members of I Square Media, LLC,’²⁷ was executed ‘only in anticipation of concurrent closings for a number of transactions’²⁸ (which I-Square asserts did not occur), then [I-Square] must still confront the fact that [*sic*] the May 9, 2014 Opinion Letter prepared by William & Anderson PLC (Option Letter).”²⁹ Marshall Media asserts that the Opinion Letter “resolves any doubt that all of the events occurring on May 9, 2014, involving [SSN], [Rock City], and [I-Square], were directly tied to the execution of the Rock City APA.”³⁰ Marshall Media also asserts that it “has provided clear and convincing evidence establishing that the proposed sale of the Stations to [LRT] [is] not in the public interest[,]” and that “there are substantial and material questions associated with the actions taken by the controlling members of both [I-Square and Rock City].”³¹

7. On November 3, 2016, LRT submitted Comments (LRT Comment) “urg[ing] the [Division] to dismiss the Marshall Media [P]etition and grant the assignment applications.”³² According to LRT, the Division may deny or dismiss the Petition on jurisdictional grounds because the Commission does not have the power to “ascribe to a contract the legal status ‘enforceable under state law.’”³³ Furthermore, LRT asserts that “proper use of Section 309(d)’s analytical structure allows for swift and efficient FCC action denying the Petition.”³⁴ Additionally, LRT claims Marshall Media “failed to perfect service upon [I-Square] as required” by the Arkansas Rules of Civil Procedure, and therefore “the case was automatically dismissed, as a matter of law, as against [I-Square] on July 26, 2016.”³⁵ Therefore, as LRT asserts, “Marshall Media’s pleadings no longer present a valid basis for the FCC to defer action on the assignment applications.”³⁶

8. Marshall Media filed a Response to LRT’s comments (Response to LRT Comment) on November 30, 2016, claiming that because LRT’s “self-titled ‘Comments’ [were] an unauthorized filing, and LRT did not seek leave to submit the filing, the Comments should be stricken from the record.” Additionally, Marshall Media refutes LRT’s “assertion” that “Marshall Media’s local lawsuit against [I-

²⁵ *Id.* Marshall Media states that Shashwat Goyal, Mangaraju Chakka, and Ladly Abraham have substantial control both I-Square and SSN. *Id.*, pg. 6. Additionally, according to Marshall Media, “[t]his same level of control by the three individuals extends to [Rock City].” *Id.* Specifically, Marshall Media states that Rock City “is comprised of four members: (i) Larry Morton; (ii) Greg Fess; (iii) William Campbell; and (iv) [SSN, which has an 89 percent membership interest in Rock City].” *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.*, fn. 25.

²⁸ *Id.*, fn. 26.

²⁹ Reply at 12.

³⁰ *Id.*

³¹ *Id.* at 14.

³² LRT Comment, Summary, pg. iii.

³³ *Id.* at 3.

³⁴ *Id.* at 8.

³⁵ *Id.* at 21.

³⁶ *Id.*

Square] was dismissed on July 26, 2016[.]” and provides “the Docket Report obtained from the Pulaski County Circuit Court” to show otherwise.³⁷ On December 7, 2016, LRT Replied to Marshall Media’s Response (LRT Reply to Marshall Media Response) stating that “Marshall Media has wisely refrained from even attempting to rebut LRT’s explication of Section 309(d)’s analytical structure, or LRT’s application of that structure to the facts of this case.”³⁸ Additionally, LRT presented further arguments pertaining to its claim that Marshall Media failed to perfect service on I-Square pursuant to the Arkansas Rules of Civil Procedure.³⁹

9. With regard to Marshall Media’s Petition, Section 309(d)(1) of the Communications Act of 1934 (Act), as amended, provides a “party in interest” the opportunity to file a petition to deny an application for the transfer or assignment of a license.⁴⁰ Section 309(d)(1) of the Act also authorizes the Commission to promulgate rules determining the length of time for which a “party in interest” may file a petition to deny.⁴¹ Pursuant to Commission rules (Rules), a “party in interest” must file a petition to deny no later than 30 days after the Commission issues public notice of the acceptance for filing an application for the assignment of a license.⁴² Here, the Commission accepted for filing I-Square’s application to assign the Stations’ licenses to LRT on January 11, 2016,⁴³ and issued a public notice on January 13, 2016.⁴⁴ All petitions to deny were due on February 12, 2016. Marshall Media filed its Petition on March 8, 2016, which was 25 days past the filing deadline. Therefore, the Division dismisses Marshall Media’s Petition as being late-filed pursuant to Section 73.3584(a) of the Rules. However, the Division addresses Marshall Media’s late-filed Petition as an informal objection pursuant to Section 73.3587 of the Rules.⁴⁵

10. Pursuant to Section 309(d)(1) of the Act, the Division applies a two-part test when evaluating an informal objection under the public interest standard.⁴⁶ In part one of the test, the Division must determine whether the informal objection contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁴⁷ The Division’s analysis under this part of the test “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [informal objection] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established.”⁴⁸ If the informal

³⁷ Response to LRT Comment, pg. 2.

³⁸ Reply to Marshall Media Response at 2.

³⁹ *Id.* at 2-4.

⁴⁰ 47 U.S.C. § 309(d)(1).

⁴¹ *Id.*

⁴² 47 CFR § 73.3584(a).

⁴³ See File No. BALCDT-20160108AAQ.

⁴⁴ *Broadcast Applications*, Report No. 28651, Public Notice (MB Jan. 13, 2016).

⁴⁵ 47 CFR § 73.3587(a).

⁴⁶ 47 U.S.C. §§ 309(d)(1) and 310(d); *Channel 61 Associates, LLC*, Letter Order, 31 FCC Rcd 1340, 1343 (Vid. Div. 2016); See also *Melodie Virtue, Esq. Meredith S. Senter, Jr., Esq.*, Letter Order, 30 FCC 6045, 6051 (Aud. Div. 2015).

⁴⁷ *Id.*; *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*).

⁴⁸ *Mr. Richard C. Young c/o Robert W. Braun, Esq. Dutton, Braun, Staack & Hellman, P.L.C. Kurt A. Wimmer, Esq. Covington & Burling*, 21 FCC Rcd 6900, 6901 (2006) (citing *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); See also *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (affirming two-step public interest analysis)).

objection satisfies part one of the test, the Division then must determine “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”⁴⁹ If the informal objection fails to satisfy both steps, the Division will deny the informal objection if granting the application would otherwise serve the public interest, convenience, and necessity.⁵⁰ For the reasons set forth below, the Division denies Marshall Media’s Petition as an informal objection.

III. DISCUSSION

11. We have reviewed the application before us, and, based on the following analysis, determined that granting the above-referenced Application for Assignment of Licenses, despite the private contractual dispute, would be in the public interest, convenience, and necessity. Here, Marshall Media’s informal objection fails to meet part one of the Commission’s two-part test because it did not provide the Division with specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest. We acknowledge the complexity of the contractual dispute at issue here. In its pleadings, Marshall Media proffered facts purporting to show that the Rock City APA was consummated, and I-Square, as a result of the alleged consummation, lost its authority to assign the Stations’ licenses to LRT. Based on these allegations of fact, Marshall Media argued that the Division should “deny or dismiss” the 2016 Application because the Division’s grant of the application would result in the “*ultra vires*” assignment of the Stations’ licenses.

12. While it is true that an unauthorized transfer of control of an FCC License would result in a potential violation of Section 310(d) of the Act,⁵¹ Marshall Media’s informal objection requires the Division to make a *de facto* determination, based on Marshall Media’s allegations of fact, whether the Rock City APA was consummated, the *sine qua non* of whether control was transferred to Rock City. Because the “ultimate fact in dispute”⁵² is contractual in nature, the Division lacks jurisdiction over this matter.⁵³ Pursuant to Commission precedent, the Division will not adjudicate private contractual disputes.⁵⁴ Instead, the Division will defer contractual disputes to state and local courts.⁵⁵ The Commission is able to effectuate the decision of the court via traditional application and enforcement processes without disturbing the comity between the FCC and local courts, which are better equipped to make decisions involving complex contractual disputes.

III. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 154(i) of the Communications Act of 1934, as amended,⁵⁶ and by the authority delegated by Sections 0.61 and 0.283 of the Commission’s

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 47 U.S.C. § 310(d).

⁵² *See supra* fn. 60.

⁵³ *See Radio Station Wow, Inc.*, 326 U.S. 120, 131-32 (1945).

⁵⁴ *See Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985).

⁵⁵ *Radio Station WOW v. Johnson*, 326 U.S. 120 (1945); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985). *Channel 61 Associates*, Letter Order, 31 FCC Rcd 1340, 1343 (Vid. Div. 2016) (“[T]he existence of a contractual dispute does not compel the Commission to stop processing a license application until the matter is resolved by the courts”); *KAXT, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 2691 (Vid. Div. 2015). *See Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985).

⁵⁶ 47 U.S.C. § 154(i).

rules,⁵⁷ that the Petition to Deny, Dismiss, or Hold in Abeyance filed by Marshall Media, LLC, **IS DISMISSED**, and when considered as an informal objection **IS DENIED**.

14. **IT IS FURTHER ORDERED** that the application to assign the licenses of stations KMYA-DT, Camden, Arkansas, and KMYA-LP, Sheridan, Arkansas, file no. BALCDT-20160108AAQ, **IS GRANTED**.

FEDERAL COMMUNICATIONS
COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁵⁷ 47 CFR §§ 0.61, 0.283.